Programmatic Endangered Species Act (ESA) and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation Specific Project Information Form for *Shellfish Activities in Washington State Inland Marine Waters*

Programmatic Conditions:

Will Meet	Will Not Meet	Not Applicable	PROGRAMMATIC CONDITIONS
			1. Gravel and shell shall be washed prior to use for substrate enhancement (e.g. frosting, shellfish bed restoration) and applied in minimal amounts using methods that result in **less than 1-inch** depth on the substrate annually. Shell material shall be procured from clean sources that do not deplete the supply of shell bottom. Shells shall be cleaned or left on dry land for a minimum of one month or both before placement in the marine environment. Shells from the local area shall be used whenever possible. Shell or gravel material shall not be applied so that it piles onto the substrate. Use of a split-hull (e.g., hopper-type) barge to dump the material is prohibited.
			2. For '**new**[1]' activities only, gravel or shell material shall not be applied to enhance substrate for shellfish activities where native eelgrass or kelp is present.
			3. Turbidity resulting from oyster dredge harvest shall be minimized by adjusting dredge bags to "skim" the surface of the substrate during harvest.
			4. Unsuitable material (e.g., trash, debris, car bodies, asphalt, tires) shall not be discharged or used as fill (e.g., used to secure nets, create nurseries, etc.).
			5. For '**new**' activities only, shellfish activities (e.g., racks, stakes, tubes, nets, bags, long-lines, on-bottom cultivation) shall not occur within 16 horizontal feet of native eelgrass or kelp. If native eelgrass or kelp is present in the vicinity of an area new to shellfish activities, the eelgrass/kelp shall be delineated[2] and a map or sketch prepared and submitted to the Corps. Surveys to determine presence and location of eelgrass shall be done during times of peak above-ground biomass: June—September. The following information must be included to scale: parcel boundaries, eelgrass/kelp locations and on-site dimensions, shellfish activity locations and dimensions.

[1] New activities are the specific footprint of those activities that were undertaken after March 18, 2007. Expansion of activities into a new geographic footprint that had not previously been in commercial aquaculture is treated as a new footprint for the purpose of this programmatic ESA consultation.

[2] For guidance see Corps' *Seattle District Components of a Complete Eelgrass Delineation and Characterization Report* (January 2018).

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			6. For '**new**' activities only, activities shall not occur above the tidal elevation of +7-ft. (MLLW) if the area is listed as **documented surf smelt**[3] spawning habitat by WDFW. A map showing the location of documented surf smelt spawning habitat is available at the WDFW website.
			7. For '**new**' activities only, activities shall not occur above the tidal elevation of +5-ft. (MLLW) if the area is listed as **documented sand lance** spawning habitat by WDFW. A map showing the location of documented sand lance[4] spawning habitat is available at the WDFW website.
			8. If conducting 1) mechanical dredge harvesting, 2) raking, 3) harrowing, 4) tilling, leveling or other bed preparation activities, 5) frosting or applying gravel or shell on beds, or 6) removing equipment or material (net, tubes, bags) within a **documented or potential spawning area** for **Pacific herring**[5] outside the approved work window, the work area shall be surveyed for the presence of herring spawn prior to the activity occurring. Vegetation, substrate, and materials (nets, tubes, etc.) shall be inspected. If herring spawn is present, these activities are prohibited in the area where spawning has occurred until such time as the eggs have hatched and herring spawn is no longer present. A record shall be maintained of spawn surveys including the date and time of surveys; the area, materials, and equipment surveyed; results of the survey, etc. The Corps and the Services shall be notified if spawn is detected during a survey. The record of spawn surveys shall be made available upon request to the Corps and the Services
			9. For '**new**' activities only, activities occurring in or adjacent to **potential spawning habitat for sand lance or surf smelt** shall have a spawn survey completed by an approved biologist[6] prior to undertaking bed preparation, maintenance, and harvest activities if work shall occur outside approved work windows for these species. If eggs are present, these activities are prohibited in the areas where spawning has occurred until such time as the eggs have hatched and spawn is no longer present. A record shall be maintained of spawn surveys including the date and time of surveys; the area, materials, and equipment surveyed; results of the survey, etc. The Corps and Services shall be notified if spawn is detected during a survey. The record of spawn surveys shall be made available upon request to the Corps and the Services.

[3] Surf smelt are *Hypomesus pretiosus*.
[4] Sand lance are *Ammodytes hexapterus*.
[5] Pacific herring are *Clupea pallasi*
[6] For information on how to become an "approved biologist" for the purpose of conducting forage fish surveys, please contact WDFW.

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			10. All shellfish gear (e.g., socks, bags, racks, marker stakes, rebar, nets, and tubes) that is not immediately needed, or is not firmly secured to the substrate, will be moved to a storage area landward of MHHW prior to the next high tide. Gear that is firmly secured to the substrate may remain on the tidelands for a consecutive period of time up to 7 days. Note: This is not meant to apply to the wet storage of harvested shellfish.
			11. All pump intakes (e.g., for washing down gear) that use seawater shall be screened in accordance with NMFS and WDFW criteria. Note: This does not apply to work boat motor intakes (jet pumps) or through-hull intakes.
			12. Land vehicles (e.g., all-terrain, trucks) shall be washed in an upland area such that wash water is not allowed to enter any stream, waterbody, or wetland. Wash water shall be disposed of upland in a location where all water is infiltrated into the ground (i.e., no flow into a waterbody or wetland).
			13. Land vehicles shall be stored, fueled, and maintained in a vehicle staging area located 150 feet or more from any stream, waterbody, or wetland. Where this is not possible, attach (1) documentation as to why compliance is not possible, and (2) a copy of a spill-prevention plan. A clean-up kit shall be maintained and readily available on-site.
			14. For boats and other gas-powered vehicles or power equipment that cannot be fueled in a staging area 150 ft. away from a waterbody or at a fuel dock, fuels shall be transferred in Environmental Protection Agency (EPA)-compliant portable fuel containers 5 gallons or smaller at a time during refilling. A polypropylene pad or other appropriate spill protection and a funnel or spill-proof spout shall be used in the event of a spill. A spill kit shall be available and used in the event of a spill. All spills shall be reported to the Washington Emergency Management Office at (800) 258-5990. All waste oil or other clean-up materials contaminated with petroleum products shall be properly disposed of off-site.
			15. All vehicles operated within 150 feet of any stream, waterbody, or wetland shall be inspected daily for fluid leaks before leaving the vehicle staging area. Any leaks detected shall be repaired in the vehicle staging area before the vehicle resumes operation and documented in a record that is available for review on request by the Corps and Services.
			16. The direct or indirect contact of toxic compounds including creosote, wood preservatives, paint, etc. with the marine environment shall be prevented. *[This does not apply to boats.]*

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			17. All tubes, mesh bags and area nets shall be clearly, indelibly, and permanently marked to identify the permittee name and contact information (e.g., telephone number, email address, mailing address). On the nets, identification markers shall be placed with a minimum of one identification marker for each 50 feet of net.
			18. All equipment, gear, and other structures including anti-predator nets, stakes, and tubes) shall be tightly secured to prevent them from breaking free.
			19. All foam material (whether used for floatation of for any other purpose) must be encapsulated within a shell that prevents breakup or loss of foam material into the water and is not readily subject to damage by ultraviolet radiation or abrasion. Un-encapsulated foam material used for current, on-going activities shall be removed or replaced.
			20. Tires shall not be used as part of above and below structures or where tires could potentially come in contact with the water (e.g., floatation, fenders, hinges). Tires currently being used for floatation shall be replaced with inert or encapsulated materials, such as plastic or encased foam, during maintenance or repair of the structure.
			21. At least once every three months, beaches in the project vicinity shall be patrolled by crews who shall retrieve debris (e.g., anti-predator nets, bags, stakes, disks, tubes) that escapes from the project area. Within the project vicinity, locations shall be identified where debris tends to accumulate due to wave, current, or wind action. After weather events these locations shall be patrolled by crews who shall remove and dispose of shellfish-related debris appropriately. A record shall be maintained with the following information and the record shall be made available upon request to the Corps, NMFS, and USFWS: date of patrol, location of areas patrolled, description of the type and amount of retrieved debris, other pertinent information.
			22. When performing other activities on-site, the grower shall routinely inspect for and document any fish or wildlife found entrapped or entangled in nets or other shellfish equipment, stranded behind berms or dikes, or stranded within pools impounded by or around shellfish culturing equipment. In the event that fish, bird, or mammal are found entangled or stranded, the grower shall: 1) provide immediate notice (within 24 hours) to WDFW (all species), USFWS/NMFS (all species) or Marine Mammal Stranding Network (marine mammals), 2) attempt to release the individual(s) without harm, and 3) provide a written and photographic record of the event, including dates, species identification, number of individuals, and final disposition, to the Corps and Services. Contact USFWS Law Enforcement Office at (425) 883-8122 or the Washington USFWS Office at (360) 753-9440 with any questions about the preservation of specimens.

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			23. Report lost cover nets regardless of whether fish were entangled. If fish are observed entangled, they shall be collected and preserved in a freezer and the Central Puget Sound Branch Chief in the NMFS' Lacey Office contacted to determine steps to identify the species.
			24. Vehicles (e.g., ATV's, tractors) shall not be used within native eelgrass beds. If there is no alternative for site access, attach a plan describing specific measures and/or best management practices that shall be undertaken to minimize negative effects to eelgrass from vehicle operation. The access plan shall include the following components: (a) frequency of access at each location, (b) use of only the minimum vehicles needed to conduct the work and a description of the minimum number of vehicles needed at each visit, and (c) consistency in anchoring/grounding in the same location and/or traveling on the same path to restrict eelgrass disturbance to a very small footprint.
			25. Vessels shall not ground or anchor in native eelgrass or kelp and paths through native eelgrass or kelp shall not be established. If there is no other access to the site or the special condition cannot be met due to human-safety considerations, attach a site-specific plan describing specific measures and/or best management practices that shall be undertaken to minimize negative effects to eelgrass from vessel operation and accessing the shellfish areas. The access plan shall include the following components: (a) frequency of access at each location, (b) use of only the minimum vehicles needed to conduct the work and a description of the minimum number of vehicles needed at each visit, and (c) consistency in anchoring/grounding in the same location and/or traveling on the same path to restrict eelgrass disturbance to a very small footprint.
			26. Unless prohibited by substrate or other specific site conditions, floats and rafts (includes work and dive platforms)shall use embedded anchors and midline floats to prevent dragging of anchors or lines. Floats and rafts that are not in compliance with this standard shall be upgraded to meet this standard during scheduled maintenance, repair, or replacement or before the end of the term of the next renewed authorization. [*Note: Any alternative to using an embedded anchor must be approved by the NMFS.*]
			27. Activities that are directly associated with shellfish activities (e.g., access roads, wet storage) shall not result in removal of native riparian vegetation extending landward 150 ft. horizontally from MHHW (includes both wetland and upland vegetation) and disturbance shall be limited to the minimum necessary to access or engage in shellfish activities.
			28. Native salt marsh vegetation shall not be removed and disturbance shall be limited to the minimum necessary to access or engage in shellfish activities.

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			29. Intake or outfall structures used to connect upland wet storage holding tanks shall be authorized, conditionally authorized, or specifically exempted by, or otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (NPDES).
			AREA-SPECIFIC PROGRAMMATIC CONDITIONS
			30. **Puget Sound and Hood Canal only**: For **fallow**[7] areas that have been colonized by eelgrass, only oyster long lines spaced laterally at 10 ft. intervals shall be used. Flip bags, if used, must be suspended above the substrate so they do not rest on substrate at low tide. No other culture method shall be used in fallow areas colonized by eelgrass. Further, with the exception of mechanized long-line harvest, no mechanized activities shall occur in fallow areas colonized by eelgrass. This does not apply to fallow areas in Willapa Bay or Grays Harbor.
			31. **North Puget Sound only**: Mechanical dredge harvest and harrowing shall not be conducted in between April 1 and August 31.
			32. The placement of gravel or shell directly into the water column (i.e., graveling or frosting) shall not be conducted between February 1 and March 15 in **designated critical habitat**[8] **for Hood Canal summer-run chum salmon.**
			33. **Hood Canal summer-run chum salmon designated critical habitat**: Between February 1 and April 30, shellfish planting and harvesting shall not occur within 15 feet waterward of the waterline (tideline) to protect juvenile chum salmon. In addition, shellfish activities which increase turbidity in the nearshore water (e.g., geoduck harvest) shall not occur at all during this timeframe.
			EXCLUDED ACTIVITIES UNDER THIS PROGRAMMATIC
			34. Vertical fencing/vertical nets or drift fences (includes oyster corrals) are not covered and shall not be used.
			35. New berms or dikes or the expansion or maintenance of current, authorized berms or dikes is not covered under this programmatic. Installation, expansion, or maintenance of berms or dikes shall not occur.
			36. Installation of new piles or maintenance to piles of any kind are not covered under this programmatic and shall not occur. [*An additional, separate form is required for installation or maintenance to piles.*]

[7] Fallow refers to areas that are periodically allowed to lie fallow as part of normal operations.

[8] Critical habitat for Hood Canal summer-run chum salmon occur in Hood Canal and the Strait of Juan de Fuca marine areas in Clallam, Jefferson, Kitsap, and Mason Counties. Exact locations and excluded areas are described at: http://www.westcoast.fisheries.noaa.gov/publications/frn/2005/70fr52739.pdf

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			37. Mooring buoys shall not be installed or maintained. [*An additional, separate form is required for installation of mooring buoys.*]
			38. Cultivation of new species of shellfish not previously cultivated in the action area is not covered under this programmatic and shall not occur.
			39. Installation or maintenance of attendant features, such as docks, piers, boat ramps, stockpiles, or staging areas are not covered by this programmatic and shall not occur. [*Additional forms may be available that address attendant features, please coordinate with Corps prior to submitting.*]
			40. Deposition of shell material back into waters of the United States as waste is not covered and shall not occur.
			41. Dredging or creating channels so as to redirect fresh water flow is not covered under this programmatic and shall not occur.
			42. Installation of "new" rafts is not covered under this programmatic and shall not occur.
			43. Expansion of continuing rafts is not covered under this programmatic and shall not occur.
			44. Installation of "new" or the relocation or expansion of FLUPSYs or floats is not covered under this programmatic and shall not occur.
			45. The use of materials that lack structural integrity in the marine environment (e.g., plastic children's wading pools) is not covered under this programmatic and shall not occur.
			46. The activities being authorized by this action shall not involve the use of pesticides or herbicides during the time of this authorization.